

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)	
)	
v.)	ID Nos. 1409005325, 1408018813,
)	1410000554, 1410004197 and
SHANTELL NEWMAN,)	1702005372
)	
Defendant.)	

Submitted: January 24, 2019

Decided: February 1, 2019

Defendant's Motion to Sever - DENIED
Defendant's Motion *in Limine* - GRANTED IN PART, DENIED IN PART

MEMORANDUM OPINION

Dominic A. Carrera, Jr., Esquire and Jenna Milecki, Esquire, Department of Justice, 820 N. French Street, Wilmington, DE 19801, Attorneys for Plaintiff State of Delaware.

Elliot Margules, Esquire and David Skoranski, Esquire, Office of Defense Services, 820 N. French Street, Wilmington, DE 19801. Attorneys for Defendant Shantell Newman.

CARPENTER, J.

I. INTRODUCTION

The Court presently has two motions filed by Shantell Newman (“Defendant”) in relation to the eight count Indictment in the above-captioned cases. The Defendant was indicted on April 3, 2017 for one count of Aggravated Act of Intimidation, one count of Stalking, one count of Harassment, four counts of Terroristic Threatening and one count of Falsely Reporting an Incident. The Defendant is requesting that the Court (a) sever Count I, the Aggravated Act of Intimidation charge, from the remaining Counts of the Indictment; (b) sever Count VII, Terroristic Threatening, and Count VIII, Falsely Reporting an Incident, from the other counts; and (c) try Counts II, III, IV, V, and VI together. The Defendant has also filed a Motion *in Limine* requesting that the incidents that occurred in Maryland, which are included as predicate acts in the Stalking charge, be excluded. This is the Court’s ruling on each Motion.

II. STATEMENT OF FACTS

These charges stem from the Defendant’s alleged reaction to being evicted from her apartment. The victims of the conduct set forth in the Indictment were her landlord and the property manager of the apartment. The criminal acts are alleged to have begun in 2014 when the eviction proceeding started and continued through February 2017, except for an 18-month period when the Defendant was

incarcerated in Maryland. She was arrested on the Delaware charges in February of 2017 and the conduct ceased at that point in time. There are now charges pending in both Maryland and Delaware regarding her conduct with these victims.

(A) Motion to Sever

The charges found in Counts III through VIII were all scheduled for trial to be held in the Court of Common Pleas on February 8, 2017. However, it is alleged that the Defendant made threats of force or violence that were intended to dissuade the victims from appearing. This caused the State to nolle pros the Court of Common Pleas matter and led to the felony charge of Aggravated Act of Intimidation to be indicted for the threatening conduct which occurred on the eve of trial. In addition, the State added a Stalking charge for which the course of conduct matters included the conduct found in Counts III through VIII of the Indictment.

Under Delaware Superior Court Rule 8(a), offenses of the same or similar character or based on two or more acts committed together or which constitute a common plan or scheme may be indicted together.¹ If, however, Defendant is prejudiced by the joinder of the offenses, the Court may order separate trials.² In considering a Motion to Sever, the Court must also consider whether the

¹ Del. Super. Ct. Crim. R. 8(a).

² Del. Super. Ct. Crim. R. 14.

evidence of the charges the Defendant is requesting to be severed would be admissible in the trial of the other offenses. The Court finds that the charges here are interrelated and demonstrate a pattern of behavior that would provide justification to allow the Defendant's conduct through this period of time to be admitted in the trials of the Stalking and Aggravated Act of Intimidation charges. Therefore, the Motion to Sever will be denied.

There is no dispute that the evidence to support the Harassment and Terroristic Threatening charges found in Counts III, IV, V and VI would be admissible in the Stalking matter. So, even the Defendant appears to agree those Counts should be tried together. The Defendant, however, argues that Counts VII and VIII should be severed as they deal with a different victim, i.e. the landlord instead of the property manager. However, the behavior and anger of the Defendant relates to misconduct directed toward both victims and centers around the Defendant's attempt to avoid eviction by her landlord, Mr. Howard, as pursued by the property manager, Ms. Brown. The victim distinction asserted by Defendant does not justify severance.

Finally, the Defendant's argument that the Aggravated Act of Intimidation found in Count I should be severed is also without merit. The threats relate to a Court of Common Pleas trial that was to take place for the conduct set forth in

Counts III through VIII. To establish the Aggravated Act of Intimidation, the State would be required to show why the threat occurred and clearly it is because the alleged offenses found in Counts III through VIII were proceeding to trial. The conduct here is so interrelated that separating the Counts would be a waste of judicial resources, and the Court finds it would not result in a reasonable probability of substantive injustice or the denial of a fair trial to the Defendant. All the offenses relate to the Defendant's conduct against two specific victims stemming from a single incident, her eviction. It is fair and appropriate that these matters be tried together.

(B) Motion *in Limine*

The Court has reviewed the assertions in the Defendant's Motion *in Limine* and took testimony from officers of the Elkton Police Department regarding the alleged conduct which occurred in Maryland. First, it is clear that the State is not relying upon the Maryland conduct to establish the course of conduct required under the Stalking statute. The State will be required to prove there are three or more Delaware incidents that constitute the course of conduct required under the statute. The State, however, is requesting that the Maryland conduct be admitted under Rule 404(b) to establish motive, intent, plan, knowledge and identity.³ The

³ D.R.E. Rule 404(b).

Court has performed the analysis required under *Getz v. State* and finds all of the elements have been established by the State.⁴ The Court finds:

- (1) The evidence of other cases would be material to the Stalking offense.
- (2) The introduction of the Maryland conduct would be utilized to establish knowledge, intent, plan and/or motive.
- (3) As a result of the testimony of the Elkton Police Department officers, the Court finds the other crimes are sufficiently proven by plain, clear and conclusive evidence.
- (4) The offenses are not remote in time; and
- (5) The Court will instruct the jury as to the limited purpose of such evidence.

So under a *Getz* and 404(b) analysis, the Court finds the Maryland conduct is admissible.

The Defendant also argues that some of the alleged Maryland conduct is the subject of pending cases in Maryland and its introduction would place her in the untenable position of being unable to respond to the allegations without potentially incriminating herself in the Maryland matters. In essence, she argues the State would be forcing her to testify and the testimony could be used against her in Maryland.

⁴ *Getz v. State*, 538 A.2d 726 (Del. 1988).

On this point, the Court agrees. Admitting evidence regarding the conduct in Maryland that has led to the criminal charges in that jurisdiction would place the Defendant in the position of having to choose between testifying about those events that could be used against her in the Maryland proceedings or not testifying and allowing that conduct to go forward uncontested. The Court finds placing the Defendant in such a circumstance would be unfairly prejudicial, and while the evidence may have probative value, the Court finds it is not admissible under Rule 403.⁵

The Defendant also argues that there is insufficient evidence to support three Delaware circumstances that the State has identified in its Bill of Particulars and which it intends to introduce to establish the course of conduct required under the Stalking statute. In the briefing provided on these Motions, the State has set forth evidence it will produce and rely upon regarding these events. The Court finds, at the moment, the information provided by the State is sufficient and Defendant's Motion is premature in requesting the Court to exclude that evidence.

The evidence will be presented through the testimony of the victims and there appears to be sufficient convincing support to allow its submission. Simply put, this is a trial issue that will have to be addressed when the evidence is

⁵ D.R.E. Rule 403.

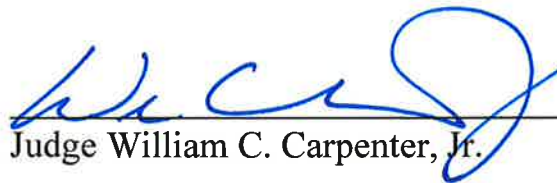
attempted to be introduced. The Court would ask that the evidence regarding the three instances be presented outside the presence of the jury before the State attempts to introduce it at trial. This will allow the Court to have a better perspective as to the sufficiency of the evidence regarding these events.

Finally, the Defendant asks the Court to prohibit the State from arguing that the Falsely Reporting an Incident charge can be one of the three course of conduct requirements to establish the Stalking offense. The Court finds the Defendant's conduct as to this Count does reflect a continuing course of conduct intended to harass, embarrass, and influence the victims, and it is certainly probative to the Stalking offense. The Defendant's request to exclude this from the jury's consideration regarding the common course of conduct element is hereby denied.

III. CONCLUSION

Having resolved these matters, the Court hereby establishes that the Defendant's final case review will be held on February 18, 2019 at 1:45 p.m. and the trial will commence on March 19, 2019.

IT IS SO ORDERED.



Judge William C. Carpenter, Jr.